

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

DENNIS HABBEN

Sioux County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2014-SW- **12**

TO: Dennis Habben
3562 Racine Avenue
Dayton, IA 50530

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dennis Habben for the purpose of resolving violations related to the illegal stockpiling of waste tires. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

David Miller, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City IA 50401
Phone: 641-424-4073

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455D.23, which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D and any rule adopted pursuant to this chapter; and Iowa Code sections 455D.22 and 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Dennis Habben is engaged in the business of collecting and transporting waste tires using the name Habben Enterprises. Mr. Habben is registered with the DNR as a tire hauler. Mr. Habben has illegally disposed of waste tires at his home at 3562 Racine Avenue, Dayton, Iowa and in a building located at 300 East First Street, Harcourt, Iowa.

2. On April 6, 2012 the DNR received an anonymous complaint alleging that waste tires were being unlawfully stored at 3562 Racine Avenue, a rural farmstead north of Dayton, Iowa.

3. On April 18, 2012, the DNR investigated the complaint and found that there was a large quantity of waste tires at the property. The property was determined to be the home of Dennis Habben. During discussions with Mr. Habben, he admitted that he had a second waste tire storage location in Harcourt, Iowa. DNR personnel accompanied Mr. Habben to Harcourt and observed a large building which contained numerous waste tires. Mr. Habben informed the DNR that he would clean up both sites within three months. On April 20, 2012, the DNR issued a Notice of Violation (NOV) to Mr. Habben for the illegal storage of waste tires. The NOV provided a cleanup deadline of July 20, 2012.

4. On July 20, 2012, Mr. Habben requested a 30 day extension of the agreed upon cleanup deadline. The DNR agreed.

5. On August 13, 2012, Mr. Habben contacted the DNR and indicated that he had been unable to carry out his intended plan of cutting the waste tires for the purpose of disposing of them at the local landfill. The DNR agreed to another extension of time to September 12, 2012.

6. On September 12, 2012, the DNR inspected the Dayton property and observed that the number of waste tires at this location had substantially increased. On that date Mr. Habben verbally committed to removing the waste tires from the Dayton and Harcourt sites by March 12, 2013. On September 19, 2012, a second NOV was issued to Mr. Habben.

7. On March 2, 2013, Mr. Habben notified the DNR that he would not meet the March 12, 2013 deadline. On March 7, 2013, the DNR directed Mr. Habben to stop bringing waste tires to his property. On March 12, 2013, the DNR met with Mr. Habben and an agreement was reached whereby the DNR would not immediately initiate an enforcement action if Mr. Habben stopped bringing additional waste tires to the properties and began cutting and disposing of the tires.

8. On April 16, 2013, the DNR visited the Dayton site and found that Mr. Habben was actively cutting up waste tires but the number of waste tires at this location had not been significantly reduced.

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10. On October 9, 2013, the DNR inspected the Dayton site and found that the number of waste tires at the site had not been significantly reduced from what was documented during prior inspections.

11. On November 3, 2013, the DNR received disposal records from Mr. Habben but those records seemed to be related to Mr. Habben's ongoing tire hauling business rather than the cleanup of either of his waste tire disposal sites.

12. On December 12, 2013, the DNR visited the Dayton site and found no significant changes from prior inspections.

13. On February 12, 2014, the DNR's David Miller and Amy Buckendahl visited the Dayton site and met with Mr. Habben. At that time, it was observed that the number of waste tires disposed of at the site had not significantly changed since the site was first inspected on April 18, 2012. The total number of passenger tire equivalents (PTEs) was estimated to be 3,000. Based upon a review of photographs and discussions with Mr. Habben, it was determined that approximately 1,000 PTEs were at the Harcourt site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455D.11(4) provides that the DNR shall develop rules for waste tire stockpiling facilities. Iowa Code section 455D.11(5) provides that the DNR shall issue permits to qualified stockpiling facilities. Pursuant to section 455D.7, the Environmental Protection Commission (Commission) shall adopt rules necessary to implement chapter 455D. The Commission has adopted 567 IAC chapter 117 relating to the management of waste tires.

2. Pursuant to Iowa Code section 455D.11B and 567 IAC 117.4(1)"a", an owner or operator of a waste tire collection site shall obtain a permit from the DNR prior to operation of the site. Pursuant to Iowa Code section 455D.11(1)(d), a "tire collector" includes a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires. The facts set forth above establish violations of these provisions.

3. Pursuant to 567 IAC 117.2, "passenger tire equivalent" means a conversion measurement that is used to estimate waste tire weights and volume amounts and in which one passenger car tire with a rim diameter of 17 inches or less is equal to 20 pounds. One cubic yard of volume shall contain 15 PTEs. Tires larger than a passenger car tire shall be evaluated for volume using this conversion measurement. Pursuant to 567 IAC 117.4(1) "a", no business or individual shall store more than 500 PTEs without obtaining a permit for a waste tire stockpile. The facts set forth above establish violations of these provisions.

4. Pursuant to 567 IAC 117.5, used tires shall be stored in a manner that provides for the prevention of the collection of water, dirt, or debris within the tire; organized through stacking, rows, and sorting which provides for accurate descriptions and counts of the types

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and sizes of tires stored; and storage shall conform to applicable local and state fire codes. Furthermore, pursuant to 567 IAC 117.5(2) used tires stored for more than one year without documentation of active resale or reuse of tire inventory in a proportion equal to 75 percent of the amount stored shall be considered waste tires and shall be subject to the applicable waste tire storage and disposal rules of this chapter. The facts set forth above establish violations of one or more of the provisions of rule 117.5.

5. Pursuant to 567 IAC 116.8(2) "b", a registered tire hauler must transport tires directly to a permitted site within 72 hours of pickup. The facts set forth above establish violations of this requirement.

6. Pursuant to 567 IAC 116.8(2) "c", a registered tire hauler may not establish or operate any intermediate storage, waste sorting, transfer or processing facility regarding the waste tires collected, unless such activities occur at a facility for which a waste stockpile permit or processing permit has been issued. The facts set forth above establish violations of this requirement.

7. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The facts set forth above establish violations of this requirement.

V. ORDER

THEREFORE, the DNR orders and Dennis Habben agrees to the following:

1. By October 1, 2014, Dennis Habben shall remove and properly dispose of every tire located at 3562 Racine Avenue, Dayton, Iowa; 300 East First Street, Harcourt, Iowa; and any other location under the ownership or control of Dennis Habben. By October 15, 2014, Dennis Habben shall provide receipts to DNR Field Office #2 which confirm the proper disposal of all tires removed pursuant to this paragraph.

2. By November 1, 2014, Dennis Habben shall pay a penalty of \$10,000. For all disposal costs verified through receipts submitted to the DNR on or before October 15, 2014 and related to disposal costs incurred between June 1, 2014 through October 1, 2014, Dennis Habben shall receive a credit toward the assessed penalty up to a maximum credit of \$7,000. Regardless of the total expended by Dennis Habben, the minimum penalty due pursuant to this administrative consent order shall be \$3,000, after any credit.

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VI. PENALTY

1. Iowa Code section 455D.25 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the waste tire stockpiling violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order. The administrative penalty is determined as follows:

Economic Benefit – Dennis Habben has achieved an economic benefit from the violations documented herein. Mr. Habben is paid a fee to haul away and properly dispose of waste tires. Industry standards for the service provided by Mr. Habben are approximately \$2 - \$4 per passenger tire and up to \$20 for a large implement tire. Based upon the 4,000 PTEs of waste tires illegally disposed of by Mr. Habben, the economic benefit realized is expected to exceed \$12,000. Because of the additional labor involved in processing, loading and rehauling the tires to comply with the terms of this administrative consent order the economic benefit can be completely mitigated because the costs will exceed the costs which would have been incurred for disposal if the tires had not been improperly delivered to the current locations. A penalty of \$5,000 is assessed for this factor but credit toward that penalty can be obtained through compliance with the waste tire removal requirements contained in Part V of this Order.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal stockpiling of waste tires provides a refuge for mosquitoes and vermin. The stockpiling of waste tires presents a threat of fire which would result in air quality violations and potential groundwater contamination. Based upon these considerations, a penalty of \$2,000 is assessed for this factor.

Culpability – Dennis Habben is in the business of hauling and properly disposing of waste tires. He is aware of the legal requirements and ignored those regulations. Mr. Habben has been provided with numerous opportunities to return to compliance and has refused to do so. In order to handle this matter administratively and due to the statutory maximum of \$10,000 for such administrative penalty, \$3,000 is assessed for this factor. In order to resolve this matter consensually, the DNR has agreed to allow the application of tire abatement costs toward up to \$2,000 of the penalty assessed for this factor.


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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dennis Habben. For that reason Dennis Habben waives his rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455D.25. Compliance with section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
July, 2014.



DENNIS HABBEN

Dated this 30 day of
June, 2014

Field Office #2; V.L.C;